MOTION FILED OCT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 101

STATE OF NEW JERSEY AND BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, *Appellants,*

v.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY, UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellees.*

On Appeal from the United States District Court for the District of New Jersey

MOTION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO FILE A BRIEF ON THE MERITS AS AMICUS CURIAE, AND ANNEXED BRIEF

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October, 1962

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The Railway Labor Executives' Association respectfully moves the Court for leave to file the annexed brief *amicus curiae* on the merits of the appeal in this case by the State of New Jersey and the Board of Pub-

lic Utilities Commissioners of the State of New Jersey. The Association obtained the consent of the appellee Interstate Commerce Commission. However, consent of the attorney for the appellee railroad was requested but refused.

I

The Railway Labor Executives' Association is a voluntary unincorporated association located in Washington, D. C., with which are affiliated twenty-three standard national and international railroad labor organizations that are the duly authorized representatives of more than 90 per cent of the nation's rail employees under the Railway Labor Act (45 U.S.C.A., Section 151 et seq.). The names of these individual organizations are:

American Railway Supervisors' Association

American Train Dispatchers' Association

Brotherhood of Locomotive Engineers

Brotherhood of Locomotive Firemen and Enginemen

Brotherhood of Maintenance of Way Employes

Brotherhood of Railroad Signalmen

Brotherhood of Railroad Trainmen

Brotherhood Railway Carmen of America

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

Brotherhood of Sleeping Car Porters

Hotel and Restaurant Employees and Bartenders International Union

International Association of Machinists

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Organization Masters, Mates & Pilots of America
National Marine Engineers' Beneficial Association
Order of Railway Conductors and Brakemen
Railroad Yardmasters of America
Railway Employes' Department, AFL-CIO
Seafarers' International Union of North America
Sheet Metal Workers' International Association
Switchmen's Union of North America
The Order of Railroad Telegraphers

This Court has heretofore recognized the Association as a proper party to appear and speak for these organizations and their member employees. *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U.S. 373 (1942); *Railway Labor Executives' Association* v. *United States*, 339 U.S. 142 (1950); *American Trucking Associations, Inc., et al.* v. *United States*, 355 U.S. 141 (1957).

Many of the foregoing organizations represent employees of the appellee railroad. As set forth below, the Association, acting on behalf of itself, these individual organizations, and the employees they represent, protested before the Interstate Commerce Commission the proposed train discontinuances involved in this case. The Association did not participate in the proceedings in the court below only because it was unaware that such proceedings were in progress until it was too late to intervene therein.

II

The questions presented by the appeal in this case are of vital importance to the Railway Labor Executives' Association, the individual organizations of which it is composed, and the railroad employees they represent.

When the notice of the appellee railroad to discontinue the passenger trains involved was first filed with the Interstate Commerce Commission pursuant to Section 13a(1) of the Interstate Commerce Act, the Association by letter dated January 6, 1961, entered its formal protest and complaint against the proposed discontinuance and advised the Commission that "this discontinuance, if carried out, will result in adverse effect to certain employees of the carrier." The same adverse effect is present in any proposed passenger train discontinuance. Thus the Association, the individual organizations of which it is composed and the employees represented by these organizations have a substantial interest in the effect of the decision below both upon the statutory procedures which the appellee railroad is required to follow in this particular instance as well as its effect upon all passenger train discontinuances.

The practical effect of the decision below is that railroad employees are denied the benefit of a hearing in which they have a full opportunity to test upon an evidentiary record the need to discontinue passenger trains where such a discontinuance results in loss of their jobs. This effect would be substantial if the decision below were limited solely to the present case. However, the decision below also has the effect of seriously circumscribing the application of Section 13a(2) to proposed passenger train discontinuances by

placing under Section 13a(1) proposed discontinuances of trains operating wholly within one state, but which carry passengers into another state by means of another form of transportation operated by a company unaffiliated with the rail carrier.

III

The appellants in this case are not in the same position as is the Association to speak for the whole of railroad labor with respect to the important problems of statutory construction before the Court on this appeal.

WHEREFORE, the Association moves the Court for leave to file the brief annexed hereto on the merits of the questions raised by the appeal.

Respectfully submitted,

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BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE

The Railway Labor Executives' Association submits this brief as *amicus curiae* in support of the prayer of the State of New Jersey and the Board of Public Utility Commissioners of the State of New Jersey that this Court reverse a final judgment of the United States District Court for the District of New Jersey, 200 F. Supp. 800 (1961) holding that Section 13a(1) of the Interstate Commerce Act (49 U.S.C.A., Section 13a (1)), rather than Section 13a(2) thereof, was applicable to a proposed discontinuance by the appellee railroad of certain passenger trains operating wholly within points of New Jersey.

THE INTEREST OF THE ASSOCIATION

The interest of the Association in this case is set forth in the annexed motion of the Association for leave to file this brief and need not be repeated here.

QUESTION PRESENTED

In the opinion of the Association, the question before the Court is whether the appellee railroad must follow the procedures set forth in Section 13a(1) of the Interstate Commerce Act, as the court below held, or those set forth in Section 13a(2) of such Act in seeking to discontinue certain passenger trains operated wholly within the State of New Jersey.

ARGUMENT

In *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana Railroad Company*, 353 U.S. 30 (1957) this Court laid down the rule of statutory construction applicable to the question here presented. At page 35 of its opinion in that case, the Court stated:

> "The language of § 3, First (i.e. Railway Labor Act) * * * should be literally applied in the absence of a clear showing of a contrary or qualified intention of Congress."

Also see *Flora* v. *United States*, 357 U.S. 63 (1958) at page 65.

The language of the statute here involved is plain and unambiguous. Section 13a(2) is applicable to a proposed "discontinuance or change, in whole or in part, by a carrier or carriers subject to this chapter, of the operation or service of any train or ferry operated wholly within the boundaries of a single State". On the other hand, Section 13a(1) is applicable "to

the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State". It is undisputed that the trains here involved operated wholly within the State of New Jersey. The statutory language as applied to the admitted fact that the trains involved operate wholly within the State of New Jersey, can lead only to the conclusion that Section 13a(2), rather than Section 13a(1), is the applicable statutory provision.

In spite of the statutory language, the decision of the court below held that Section 13a(1) was applicable because of the interstate character of the passengers' journey. However, as is clearly pointed out in the memorandum filed in this case on behalf of the United States and the Interstate Commerce Commission, the legislative history of the statutory provisions here before the Court clearly shows that Congress intended the scope of the two sections to be precisely what their plain and unambiguous language provides.

The dissenting opinion of Circuit Judge McLaughlin succinctly sums up the erroneous nature of the majority opinion in the following statement: (page 867)

> "The statute is a lean, lucid law. It cannot be misconstrued as it stands. The majority opinion refuses to take on that impossible task. So it rests its reversal of the Interstate Commerce Commission on the proposition that what the latter does in its decision is 'thwart the *apparent* purpose of Congress in adopting it.' (Emphasis supplied.) Actually, the true purpose of Congress is expressed in the unmistakable language of § 13a(1) itself. That language cannot be wrenched apart to absorb

the expedient endeavor to do now what was never contemplated when the amendment was enacted.

* * * * * *

". . . If § 13a(1) had been meant to contain the power to wipe out an entire intrastate railroad passenger service by tying it into the interstate connecting buses, the word 'bus' would have been placed in the amendment as was the word 'ferry'. If that had occurred, in all probability, the amendment would never have passed the Senate. It does seem rather conclusive that all of the legislative history re the amendment, both affirmative and negative, vividly establishes that its language is meaningful and is exactly what was agreed to."

Indeed, the Circuit Judge member of the statutory court described the appellee railroad's interpretation of Section 13a(1) as "fantastic". (page 868).

CONCLUSION

Upon the basis of the foregoing points and authorities, it is respectfully submitted that the judgment of the District Court should be reversed.

Respectfully submitted.

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